

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-135450-12

Date:

February 07, 2013

New Parent =

Old Parent =

Sub 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Company Official =

Tax Professional =

Dear :

This letter responds to your request for a ruling, submitted by your authorized representatives, dated August 15, 2012, requesting an extension of time under

§§ 301.9100-1 and -3 of the Procedure and Administration Regulations for New Parent to make an election to file a consolidated income tax return for the short year beginning Date 2 and ending Date 3. The material information submitted in that request and in subsequent correspondence is summarized below.

### **Summary of Facts**

Prior to Date 2, Old Parent was the common parent of an affiliated group of corporations that included wholly-owned Sub 1 (collectively, the “Old Parent Group”). The Old Parent Group filed a consolidated Federal income tax return on a fiscal year basis ending on Date 4.

On Date 2, New Parent was formed and it acquired all of the stock of Old Parent (the “Date 2 Acquisition”). At the time of the Date 2 Acquisition, Old Parent continued to wholly own Sub 1. An election for the New Parent affiliated group to file a consolidated return for the short taxable year beginning Date 2 and ending Date 3 was due on Date 5. However, for various reasons, a valid election was not timely made. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the election. The period of limitations on assessment under § 6501 for the short taxable year beginning Date 2 and ending Date 3 has not expired. Additionally, the period of limitations on assessment under § 6501 for the short taxable year beginning Date 1 and ending Date 2 for which the Old Parent Group intends to file its final consolidated return has not expired.

New Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Internal Revenue Code.

### **Applicable Law**

Section 1.1502-75(a)(1) of the Federal Income Tax Regulations permits a group that did not file a consolidated return for the immediately preceding taxable year to file a consolidated return in lieu of separate returns for the taxable year. Each corporation that was a member of the group during any part of the taxable year for which the consolidated return is to be filed must consent (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. A group exercising its privilege of filing a consolidated return must file the consolidated return not later than the last day prescribed by law (including extensions of time) for the filing of the common parent’s return.

Section 1.1502-75(h)(1) provides that the consolidated return for the group is made by the common parent on Form 1120, *U.S. Corporation Income Tax Return*.

Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, a Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, must be executed by each subsidiary. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 set forth the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

The time for making the election to file a consolidated return is fixed by the regulations (*i.e.*, § 1.1502-75(a)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for New Parent to file the election, provided that New Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by New Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid election for the short taxable year beginning Date 2 and ending Date 3. The information establishes that New Parent reasonably relied on a qualified tax professional who failed to make, or advise New Parent to make, the election to file the consolidated return for said short taxable year. See § 301.9100-3(b)(1)(v).

### **Ruling**

Based on the facts and information submitted, including affidavits submitted and representations made, we conclude that New Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, an extension of time is granted under § 301.9100-1 until 60 calendar days from the date on

this letter for New Parent to file the election, by filing a consolidated return, with New Parent as the common parent, and attaching a Form 1122 for each subsidiary member for the short taxable year beginning Date 2 and ending Date 3. New Parent must also attach a copy of this letter to the return. Alternatively, if such return is filed electronically, the requirement of attaching a copy of this letter to the return may be satisfied by attaching a statement to the return that provides the date and control number (PLR-135450-12) of this letter ruling.

The extension of time granted above is conditioned on the taxpayers' (New Parent's consolidated group and Old Parent's consolidated group) tax liability being not lower, in the aggregate, for all years impacted by the election, than it would have been had the election been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

We express no opinion regarding whether New Parent, Old Parent, and Sub 1 qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of New Parent filing the return or the election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the election late that are not specifically set forth in the above ruling. We also express no opinion regarding the amended consolidated return that the Old Parent Group should file for the short taxable year beginning Date 1 and ending Date 2, as described earlier.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by New Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-1 for New Parent to file the election, penalties and interest that would otherwise be applicable, if any, still apply. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file in this office, a copy of this letter ruling is being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)